

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

----

In re T.M., a Person Coming Under the Juvenile Court  
Law.

C079285

SAN JOAQUIN COUNTY HUMAN SERVICES  
AGENCY,

(Super. Ct. No. J04725)

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

M.M., mother of the minor, appeals from orders terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> Mother contends the court erred in failing to apply the beneficial relationship exception to avoid termination of her parental rights. We affirm.

---

<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

## **I. FACTS**

The minor, T.M., was first removed in October 2007 when he was 16 months old due to domestic violence in the home and father and mother's alcohol and substance abuse. Mother complied with the court ordered case plan, including chemical dependency counseling and parenting education classes, and in May 2008 the minor was returned to her care and family maintenance services were provided. In August 2008 minor was removed a second time when, during a home visit by child protective services, mother was found to be behaving erratically and under the influence of drugs and alcohol. The minor was placed in foster care while mother continued to participate in reunification services. In April 2010, minor was returned home under family maintenance. The first dependency proceeding was dismissed in December 2010.

Less than 18 months later, in May 2012, the San Joaquin Human Services Agency (Agency) filed a new petition to remove T.M. from mother's custody, again due to substance abuse. Because mother successfully reunified with the minor before, the Agency recommended the court order reunification services. The court adopted the recommendation in September 2012.

By the six-month review, mother had participated in some, but not all, services and had been terminated from drug court due to non-compliance. The court ordered further services.

The 12-month review report stated mother had not been participating in services. The minor had been diagnosed with attention deficit hyperactivity disorder, was in therapy, and his behavior had improved. Mother visited the minor once a week for an hour. Her interaction with T.M. was generally appropriate. The Agency recommended termination of services. At the review hearing in January 2014, the court adopted the recommendation and set a section 366.26 hearing.

A review report in March 2014 said that the minor's behaviors had improved to the point that therapy was terminated and there had been no concerns since November

2013. The minor's current family foster wanted to adopt him. Visits with mother continued once a week for an hour and currently the interaction did not need to be supervised.

The July 2014 assessment for the section 366.26 hearing stated the now eight-year-old minor was in good health, developmentally on track, was doing well in school, and had no mental or emotional issues since therapy had closed. The minor had been in a single placement and the caretakers wanted to adopt him. Visits with mother continued to be once a week for an hour and the foster mother occasionally invited mother to share additional time with the minor.

A status review report in January 2015 said that the minor had moved to a new foster home following a period of aggression against a younger child in his former foster home. The minor had resumed therapy and there had been no further incidents of aggressive behavior. Mother continued weekly visits, although the minor declined to attend at least one visit. The Agency sought a 90-day continuance of the section 366.26 hearing to determine whether the minor's current home would be an adoptive placement. The court adopted the recommendation.

A second assessment report for the section 366.26 hearing indicated the minor was still in therapy and had no further aggressive incidents. Mother's weekly visits continued, with the minor declining to attend from time to time. The minor's foster parent was interested in adoption, the minor liked the home and wanted to stay there and be adopted.

At the hearing in April 2015, the social worker testified that in the previous three or four months the minor had missed more than five visits with mother because he did not want to go, nor did he want to take advantage of e-mail or telephone contact with mother. However, when he did attend, visits were fine. The minor said he just did not want to visit all the time. The social worker confirmed there had been no behavioral issues and the current caretaker wanted to adopt the minor.

Mother testified she had consistently visited the minor since his removal, that visits were always good, and the minor seemed to enjoy them. Mother said they had a good relationship and the minor was very open with her in visits.

The court observed that the multiple removals had impacted the minor. The court found that the minor needed permanence, there was clear and convincing evidence he was likely to be adopted, and no exceptions to the preference for adoption had been established. The court terminated parental rights and freed the minor for adoption.

## **II. DISCUSSION**

Mother argues the court erred in failing to apply the beneficial relationship exception to avoid termination of parental rights.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several “ ‘possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]’ [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368, original emphasis.) There are only limited circumstances which permit the court to find a “compelling reason for determining that termination [of parental rights] would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The party claiming the exception has the burden of establishing the existence of any circumstances which constitute an exception to termination of parental rights. (Evid. Code, § 500; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 5.725(d)(4).)

Termination of parental rights may be detrimental to the minor when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) However, the benefit to the child must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive

parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re C.F.* (2011) 193 Cal.App.4th 549, 555.) “Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive, emotional attachment between parent and child.” (*In re I.R.* (2014) 226 Cal.App.4th 201, 213.)

Mother failed to meet her burden to establish the exception. The evidence showed that mother did maintain regular visitation and contact with the minor but did not show that continued contact would be beneficial to him. The minor had spent more than half of his life out of mother's care, looking to others to fill the parental role. During the current dependency proceedings he had regular, pleasant visits with mother. At most, this established a “friendly visitor” relationship. The minor's lack of interest in e-mail and telephone contact, and his expressed desire not to visit all the time, showed only that the relationship was pleasant but not the significant positive, emotional attachment required to establish the exception. Moreover, as the court observed, the minor, in light of his chaotic placement history with mother and foster parents, did need permanence and stability. This was best achieved by adoption. The juvenile court did not err in failing to apply the beneficial relationship exception to avoid termination of parental rights.

### III. DISPOSITION

The orders of the juvenile court are affirmed.

/S/

---

RENNER, J.

We concur:

/S/

---

RAYE, P. J.

/S/

---

ROBIE, J.